

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BERNARD CURTIS DAVIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. C12-5160RBL

ORDER DISMISSING § 2255
PETITION WITHOUT PREJUDICE

On November 19, 2011, the Court found that Davis was an armed career criminal and sentenced him to 210 months of imprisonment. Davis filed a Notice of Appeal the same day, and the Ninth Circuit assigned the Case No. 11-30333.

On February 2, 2012, while the Ninth Circuit appeal was pending, Davis filed this § 2255 petition in this case. Davis argues that this Court lacks subject matter jurisdiction over the criminal case and personal jurisdiction because Davis was not served with process.

The Ninth Circuit has stated that a “district court should not entertain a habeas corpus petition while there is an appeal pending in [the Ninth Circuit] or in the Supreme Court,

‘reasoning that disposition of the appeal may render the habeas corpus petition unnecessary’.”

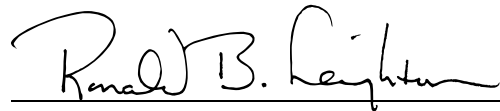
Feldman v. Henman, 815 F.2d 1318, 1320-21 (9th Cir. 1989). The Ninth Circuit has applied this

1 rule to the consideration of § 2255 petitions where a direct appeal is pending. *Jack v. United*
2 *States*, 435 F.2d 317, 318 (9th Cir. 1970).

3 The Court declines to issue a Certificate of Appealability because the defendant has
4 failed to make “a substantial showing of the denial of a constitutional right.” 28 U.S.C.
5 §2253(c)(2).

6 Based on the foregoing reasoning, this Court **DISMISSES** this action without prejudice.

7 Dated this 25th day of June, 2012.

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10 Ronald B. Leighton
United States District Judge
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